



July 17, 2000

Mr. Thomas Keever
Assistant District Attorney
Criminal District Attorney's Office
P.O. Box 2850
Denton, Texas 76202

OR2000-2687

Dear Mr. Keever:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137080.

The Civil Division of the Denton Criminal District Attorney's Office received a request for information directed to Denton County Judge Kirk Wilson ("the Judge"). You contend that two responsive items, which you identify as exhibits C and D, are, respectively, excepted from disclosure under Government Code sections 552.107 and 552.105. We assume that all other items responsive to this request have been released. You have supplied the subject information to this office for review. We have considered the exceptions you claim and reviewed the submitted information.

Exhibit C is an email communication from an attorney to the Judge concerning proposed procedures. Exhibit D is a letter from Denton County Purchasing Department to the City of Lewisville concerning a land purchase negotiation.

Section 552.105 excepts from required public disclosure information relating to (1) the location of real or personal property for a public purpose prior to public announcement of the project; or (2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

This exception protects a governmental body's planning and negotiating position with respect to particular transactions and its protection is therefore limited in duration. Open Records Decision No. 357 (1982). The exception extends to all information *related* to the location or cost of property to be acquired, including all proposed plans, locations and cost

estimates, until the project is completed; all factual information relating to the project must be made available to the public on completion of the project. *See* Open Records Decision Nos. 564 (1990), 234 (1980).

To show the applicability of section 552.105, a governmental body must make a good faith determination that release of the information could damage its negotiating position with respect to the acquisition of property, subject to review by this office. Open Records Decision No. 564 (1990). You have not represented that you have made such a determination. Moreover, the submitted letter does not appear to contain information which would damage the county's negotiating position if released. We conclude that you have not demonstrated that this information is excepted from public disclosure by section 552.105 of the Government Code. Exhibit D must therefore be released.

Section 552.107 provides in relevant part that information is excepted from required public disclosure if

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

Gov't Code § 552.107(1). Although the scope of section 552.107(1) would appear to be co-extensive with that of rule 1.05 of the Texas Disciplinary Rules of Professional Conduct, which prohibits an attorney from divulging "confidential information," this office has concluded that such an interpretation of rule 1.05 would be in potential conflict with the purposes of chapter 552 of the Government Code. *See* Open Records Decision No. 574 at 4-5 (1990) (construing predecessor statute). Accordingly, this office has determined that section 552.107(1) protects only what rule 1.05 describes as "privileged" information, *i.e.*, information that represents confidential communications between attorney and client. *Id.* at 5. "Unprivileged" information, as defined by rule 1.05, is not excepted from disclosure under section 552.107(1). *Id.* Thus, section 552.107(1) excepts from disclosure only client confidences or requests for legal advice communicated by the client to the attorney and legal advice or opinion rendered by the attorney to the client or to an associated attorney in the course of rendering legal services to the client. *Id.* at 7-8. Based on our review of exhibit C, we conclude that it consists of attorney advice and opinion. You may withhold exhibit C under section 552.107(1) of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited

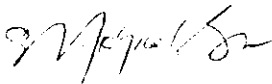
from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/nc

Ref: ID# 137080

Encl Submitted documents

cc: Mr. Charles Siderius
Denton Record-Chronicle
P.O. Box 369
Denton, Texas 76201
(w/o enclosures)